

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CRANESVILLE BLOCK CO., INC.
Employer

and

Case 03-RC-190952

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 294
Union

ORDER

The Employer's Request for Review of the Regional Director's Supplemental Decision and Order on Challenged Ballot and Objections is denied as it raises no substantial issues warranting review.¹

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., September 6, 2017.

Chairman Miscimarra, dissenting.

¹ We agree with the Regional Director's conclusion that mechanic William Deming is not a supervisor under the Act because he does not assign work using independent judgment, is not held accountable for the performance of the employees he directs, and does not effectively recommend discipline. See *Shaw Inc.*, 350 NLRB 354, 356 fn. 9 (2007) ("Assigning employees according to their known skills is not evidence of independent judgment."); *Oakwood Healthcare, Inc.*, 348 NLRB 686, 691-692 (2006) ("to be 'responsible,' the person directing and performing the oversight of the employee must be accountable for the performance of the task[.]"); *Veolia Transportation Services, Inc.*, 363 NLRB No. 98, slip op. at 7 (2016) (to effectively recommend discipline, "the exercise of disciplinary authority must lead to personnel action without independent investigation by upper management."). To the extent that our dissenting colleague reiterates a position rejected by the Board, we decline to revisit that issue. *LakeWood Health Center d/b/a Chi LakeWood Health*, 365 NLRB No. 10, slip op. at 1 fn. 1 (2016). See also *Buchanan Marine, L.P.*, 363 NLRB No. 58, slip op. at 2-3 (2015). Accordingly, we deny review without relying on the Regional Director's analysis under *Harborside Healthcare, Inc.*, 343 NLRB 906, 906 (2004).

Contrary to my colleagues, I would grant the Employer's Request for Review with respect to the supervisory status of William Deming and his involvement in the solicitation of authorization cards. There is considerable, largely un rebutted evidence that Deming has the authority to assign tasks to other mechanics, to responsibly direct them, and to effectively recommend discipline. As I have previously explained, the Board should not disregard such evidence "merely because it could have been stronger, more detailed, or supported by more specific examples." See, e.g., *Lakewood Health Care d/b/a Chi Lakewood Health*, 365 NLRB No. 10, slip op. at 3 (2016) (Member Miscimarra, dissenting). This evidence also raises substantial issues regarding supervisory status under the three common sense factors that I believe should be reviewed in every supervisory status case: (i) the nature of the employer's operations, (ii) the work performed by undisputed statutory employees, and (iii) whether it is plausible to conclude that all supervisory authority is vested in persons other than those whose supervisory status is in dispute. See, e.g., *Lakewood Health Care d/b/a Chi Lakewood Health*, supra, slip op. at 3-4 (Member Miscimarra, dissenting). In all other respects, I agree with the denial of review.

PHILIP A. MISCIMARRA,

CHAIRMAN